IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13903 of 2004

Between:

K. Vaddikasulu, S/o Dandaiah,
R/o Dimili Village, Rambilli Mandal,
Visakhapatnam District.

..... PETITIONER

AND

1 The State Election Commission, Andhra Pradesh, Buddha Bhavan , Secunderabad, rep. by the State Election Commissioner.
2 The District Election Authority -cum-District Collector, Visakhaptnam District, Visakhapatnam.
3 The District Panchayat Officer, Visakhapatnam District, Visakhapatnam
4 The Assistant Election Authority -cum- Mandal Parishad Development Officer, Rambilli Mandal, Visakhapatnam District.
5 Stage I Election Officer, Dimili Gram Panchayat, Rambilli Mandal, Visakhapatnam District.
6 Sri Nagireddy Venkata Ramana, S/o Musili Naidu, R/o Dimili Village, Rambilli Mandal,Visakhapatnam District.
7 Sri Senapathi Apparao, S/o Kannayya Naidu, R/o Dimili Village, Rambilli Mandal,Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the Stage I Election Officer, Dimili Gram Panchayat , Dimili, Rambilli Mandal, Visakhapatnam District, 5th respondent herein in including the names of the respondents 6 and 7 herein in the list of contesting candidates issued in Form 8 dt, 31-7-2004 in spite of their letters of withdrawal in Form 6 dt. 31-7-2004 as illegal, arbitrary, unreasonable, null and void and violative of Article 14 of the constitution of India and opposed the very spirit and object of provisions of the Andhra Pradesh Panchayat Raj Act and the Andhra Pradesh Panchayat Raj (conduct of Elections of Members and Sarpanch of Gram Panchayat, members of Mandal Parishad and

Members of Zilla Parishad) Rules, 1994 and consequently direct the respondents herein to declare the petitioner herein as the candidate unanimously elected for the post of Sarpanch of Dimili Gram Panchayat, Rambilli Mandal, Visakhapatnam District.

Counsel for Petitioner: MR.A.V.SESHA SAI

Counsel for Respondent Nos.1,2 & 4: MR.K.G.K.PRASAD (SC FOR ELECTION COMMISSION)

Counsel for Respondent No.3: G.P. FOR PANCHAYAT RAJ

The Court at the stage of admission made the following :

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ORDER:

The Petitioner is a resident of Dimili Village, Rambilli Mandal, Visakhapatnam District. In this writ petition he challenges the action of the fifth respondent namely, Election Officer (Stage-I), Dimili Gram Panchayat in including the names of respondents 6 and 7 herein in the list of contesting candidates in Form No.8 dated 31.7.2004 in spite of the letters of withdrawal given by respondents 6 and 7 in Form No.6 dated 31.7.2004 as illegal, arbitrary and unreasonable. He also seeks a consequential direction to the respondents to declare the petitioner as having been unanimously elected for the office of the Sarpanch of Dimili Gram Panchayat.

The fact of the matter in brief is as follows. For the casual vacancy of Sarpanch of Dimili Gram Panchayat, the fifth respondent issued a notification of election on 23.7.2004. As per the election schedule the last date for receipt of nominations is 27.7.2004, which are scrutinized on 28.7.2004. The last date for withdrawal of nominations is 31.7.2004. According to the writ affidavit, the petitioner and two others submitted valid nominations and accordingly Form 5(2) was issued by the fifth respondent. According to the petitioner, on 31.7.2004 the respondents 6 and 7 submitted Form No.6 withdrawing nominations. In spite of the same, it is alleged that

the fifth respondent issued list of contesting candidates in form No.8 instead of declaring the petitioner as elected. The petitioner has annexed the Xerox copies of notice of withdrawals in Form No.6 in support of petition.

Article 243-O of the Constitution of India bars the exercise of jurisdiction and no election to any Panchayat shall be called in question except by an election petition before duly constituted Tribunal. Section 233 of the A.P. Panchayat Raj Act is also to the same effect. The law is well settled that ordinarily the Court in exercise of power of judicial review cannot interfere in election matters. A reference may be made to a judgment of Supreme Court in **ELECTION COMMISSION OF INDIA V. ASHOK KUMAR** wherein the following principles are laid down:

"For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1. If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2. Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3. Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4. Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5. The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

Therefore, till the elections are completed, the invoking of judicial remedy has to be postponed. In a case of improper acceptance or improper rejection of the nomination also a writ petition is not a proper remedy. In an election process, if a nomination is rejected and on that ground election notification or election is challenged in Writ Petition, however strong the ground of challenge may be, the Court under Article 226 of the Constitution of India cannot interfere in the matter. Article 243-O of the Constitution of India bars the exercise of jurisdiction under Article 226. This aspect of the matter was considered by this Court in **V.Narayana v Election Officer, Alwal Municipality** which arose in the context of Article 243-ZG which, as mentioned above, is *in pari materia* with Article 243-O of the Constitution of India. It was held therein.

> There cannot be any doubt that a challenge to an election means and includes a challenge to any intermediary stage in the election. These intermediary stages could be issue of election notification, filing of nominations, scrutiny of nominations, rejection of nomination, voting on the polling day, declaration of results, declaration of the elected candidates and reconstitution of the municipality by duly designated authorities and authorities specified under the A.P. Municipalities Act, 1965 (the Act, for brevity) and various rules made under Section 326 of the Act. Therefore, any challenge to any order or any act at the intermediary stage of the election can only be made before the duly constituted Special Tribunal constituted for the purpose. Clause (b) of sub-section (2) of Section 326 of the Act empowers the State Government to constitute an Election Tribunal.

The decision in **Ch.Ramachandra Rao v State of A.P.**. and the decision in **V. Narayana v Election Officer, Alwal Municipality** (supra) were cited with approval by the Division Bench in **K.Ramulu v Collector and District Election Authority.** In view of the settled principles of law, this Writ Petition is not maintainable. Further, Under Rule 12 of the A.P.Panchayat Raj (Election Tribunals in Respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995, the alleged improper rejection of nomination is a ground for the election petition under Section 233 of the Act. If so advised, petitioner may challenge rejection of nomination by filing election petition.

If the petitioner has any grievance that the names of the respondents 6 and 7 were included in Form No.8 illegally and improperly, it is open to him to challenge the election after declaration of the election results. In this writ petition no relief can be granted to the petitioner having regard to the well-settled principles of law.

Accordingly, the writ petition is dismissed. No order as to costs.

6st August 2004 **(V.V.S.RAO, J.)**

Tsr.

To

1 The State Election Commission, Andhra Pradesh, Buddha Bhavan , Secunderabad.
2 The District Election Authority -cum-District Collector, Visakhaptnam District, Visakhapatnam.
3 The District Panchayat Officer, Visakhapatnam District, Visakhapatnam
4 The Assistant Election Authority -cum- Mandal Parishad Development Officer, Rambilli Mandal, Visakhapatnam District.
5 Stage I Election Officer, Dimili Gram Panchayat, Rambilli Mandal, Visakhapatnam District.

6. Two CCs to Government Pleader for Panchayat Raj, High Court

Buildings, Hyderabad. (OUT)

6. Two C.D. copies.